

SENATE BILL 1806
By Clabough

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, relative to certain tobacco products.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by designating present part 11 as part 12 and by adding the following language as a new part 11:

§ 67-4-1101.

The provisions of this part are in addition to the requirements imposed under title 67, chapter 4, part 10, and to the extent that the requirements of part 10 conflict with the requirements of part 11, the requirements of part 11, to the extent applicable, supersede those of part 10.

§ 67-4-1102.

All definitions from title 67, chapter 4, part 10, apply to this part. Additionally, as used in this part, unless the context otherwise requires:

(1) "Cigarette distributor" means any person, whether located within or outside of Tennessee, other than a retail dealer, who sells or distributes cigarettes within or into Tennessee. Such term shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a valid permit under 26 U.S.C. § 5712, if such person sells or distributes cigarettes in Tennessee only to licensed cigarette distributors, or to an export warehouse proprietor or another

cigarette manufacturer with a valid permit under 26 U.S.C. § 5712.

(2) "Cigarette importer" means any person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(3) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(4) "Cigarette retail dealer" means any person, whether located within or outside of Tennessee, who sells or distributes cigarettes to a consumer in Tennessee.

(5) "Licensed," when used with reference to a cigarette distributor, cigarette importer, cigarette manufacturer, or cigarette retail dealer, means only those persons who hold a valid and current license issued under §§ 67-4-1015 or 67-4-1103 for the type of business being engaged in. When the term "licensed" is used before a list of entities, such as "licensed cigarette distributor, cigarette importer, cigarette manufacturer, or cigarette retail dealer," such term shall apply to each entity in such list.

§ 67-4-1103.

(a) No person may engage in business as a cigarette manufacturer or cigarette importer without first obtaining a license from the department with respect to each such activity engaged in by such person. Each place of business in Tennessee shall be separately licensed. If the applicant does not have a place of business in Tennessee, the license shall be issued for such applicant's principal place of business, wherever located. A licensee shall notify the department within thirty (30) days in the event that such licensee changes its principal place of business.

(b) A license issued under this section shall remain in effect until the May 31 after its issuance.

(c) Every application for a license under this section shall be submitted on a form established by the department. Each application shall state the name and address of the applicant; the address of the applicant's principal place of business; each place of business where the applicant's business will be conducted within this state; and any other information the department may require. If the applicant is a firm, partnership, or association, the application shall state the name and address of each of its members. If the applicant is a corporation, the application shall state the name and address of each of its officers and the name and address of any person who owns, directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the corporation.

(d) No license under this section may be granted, maintained, or renewed if the applicant, or any combination of persons owning directly or indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the applicant:

(1) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

(2) Had a license under this part revoked by the department within the past two (2) years;

(3) Has been convicted of a crime relating to cigarettes, including but not limited to, selling stolen or counterfeit cigarettes, receiving stolen or counterfeit cigarettes, or involvement in the smuggling or counterfeiting of cigarettes;

(4) Has been convicted of a felony;

(5) Is a cigarette manufacturer or cigarette importer that is a participating manufacturer as defined in subsection II(jj) of the "Master

Settlement Agreement” as defined in § 47-31-102(5);

(6) Has imported, or caused to be imported, into the United States any cigarette in violation of 19 U.S.C. § 1681a; or

(7) Has imported, or caused to be imported, into the United States, or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331, et seq.

(e) In addition to any civil or criminal penalty provided by law, the commissioner:

(1) Shall revoke the license or licenses of any person who would be ineligible to obtain a new or renew a license by reason of any of the conditions for licensure provided in (d)(1) through (d)(7); and

(2) May suspend or revoke the license or licenses of any cigarette importer or cigarette manufacturer who has violated any other provision of this part or part 10.

(f) No license shall be suspended or revoked pursuant to subsection (e), except in accordance with the due process procedures provided in § 67-1-105.

(g) The commissioner shall create and maintain a website setting forth the identity of all licensed cigarette distributors, cigarette manufacturers, cigarette retail dealers, and cigarette importers, itemized by type of license possessed, and shall update the site no less frequently than once per month.

§ 67-4-1104.

(a) A tax stamp shall be applied by a licensed cigarette distributor to all cigarette packages containing cigarettes subject to state tax under § 67-4-1004.

(b) Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The commissioner shall keep

records of which cigarette distributor purchases each roll or group of sheets identified by serial number. If the commissioner permits cigarette distributors to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one (1) cigarette distributor. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same cigarette distributor or destroyed.

(c) Only licensed cigarette distributors may purchase or obtain cigarette stamps. Cigarette distributors shall not sell or provide such stamps to any other cigarette distributor or person.

(d) Any consumer who brings into or possesses within this state more than twenty (20) unstamped packages of cigarettes shall file with the commissioner a report on or before the fifteenth day of the month following the receipt or possession of such cigarettes in a form as the commissioner shall prescribe. Such report shall be accompanied by a remittance for the full amount of the tax applicable to such cigarettes; provided, that by so filing and paying the tax, the consumer shall not be relieved of any criminal or civil penalties that may be applicable under this part or part 10.

§ 67-4-1105.

(a) Cigarette distributors may apply stamps only to cigarette packages that they have received directly from a licensed cigarette manufacturer or cigarette importer. Cigarette distributors located within Tennessee shall apply stamps to all applicable cigarette packages within seventy-two (72) hours of receipt of those products. Cigarette distributors located outside of Tennessee shall apply stamps to all applicable cigarette packages before sending such packages into Tennessee.

(b) Cigarette distributors shall be permitted to set aside, without

application of stamps, only such part of the cigarette distributor's stock that is identified for sale or distribution outside of Tennessee; provided, that any such unstamped cigarettes shall be stored separately from stamped cigarette packages. No unstamped cigarette packages shall be transferred by a cigarette distributor to another facility of the cigarette distributor within Tennessee or to another person within Tennessee.

(c)

(1) A cigarette retail dealer shall report to the commissioner each sale or distribution of more than one thousand (1,000) cigarettes to any person in any single transaction. Such report shall include:

(A) The name, address, destination (including street address), vehicle license number, driver license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(B) A declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(C) A declaration of the name and address of the recipient's principal in all cases when the recipient is acting as agent.

(2) A cigarette retail dealer shall not knowingly sell more than one thousand (1,000) cigarettes to any person in any series of transactions in any two-day period without filing a report as required by subsection (c)(1).

(d) Any person who meets the definition of cigarette distributor or cigarette retail dealer under this part shall be required to obtain a license issued under § 67-4-1015 with respect to each such activity.

§ 67-4-1106.

A cigarette importer or cigarette manufacturer may sell or distribute cigarettes to a person located or doing business within Tennessee only if such person is a licensed cigarette importer or tobacco distributor. A cigarette importer may obtain cigarettes only from a licensed cigarette manufacturer. A cigarette distributor may sell or distribute cigarettes to a person located or doing business within Tennessee only if such person is a licensed cigarette distributor or cigarette retail dealer. A cigarette distributor may obtain cigarettes only from a licensed cigarette manufacturer, cigarette importer, or cigarette distributor. A cigarette retail dealer may obtain cigarettes only from a licensed cigarette distributor.

§ 67-4-1107.

(a) Except as provided in subsection (b) and except with respect to the quantity of unstamped cigarette packages allowed to be held by a consumer without payment of tax under § 67-4-1104(d), no person, other than a licensed cigarette manufacturer and cigarette importer, or a licensed cigarette distributor that receives unstamped cigarette packages directly from a licensed cigarette manufacturer or cigarette importer and holds such cigarettes in accordance with § 67-4-1105(b), shall hold an unstamped cigarette package.

(b)

(1) Any person who ships unstamped cigarettes packages in or into Tennessee other than to a licensed cigarette manufacturer, cigarette importer, or tobacco distributor shall first file with the commissioner notice of such shipment. This subdivision shall not apply to any common or contract carrier that is transporting cigarettes through this state to another location under a proper bill of lading or freight bill, which states the quantity, source, and destination of such cigarettes.

(2) Any person transporting unstamped cigarette packages into or

within Tennessee shall carry, in the vehicle used to convey the shipment, invoices or equivalent documentation of the shipment for all cigarettes in the shipment. The invoices or documentation shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity by brand of the cigarettes so transported.

§ 67-4-1108.

(a) Each cigarette manufacturer and cigarette importer shall maintain copies of invoices or equivalent documentation for, or itemized for, each of its facilities for each transaction (other than a retail transaction with a consumer) involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The invoices or documentation shall show the name and address of the other party and the quantity by brand style of the cigarettes involved in the transaction.

(b) Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the department. With the commissioner's permission, persons with multiple places of business may retain centralized records, but shall transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the commissioner or the commissioner's designee.

(c) The records required by this subsection shall be retained for a period of five (5) years from the date of the transaction.

(d) The commissioner and the commissioner's designees and the United States secretary of the treasury and the secretary of the treasury's designee, upon request, shall have access to records required under this section. The

department at its sole discretion may share the records required by this section with other law enforcement officials of the federal government or other states.

§ 67-4-1109.

(a) The commissioner or the commissioner's duly authorized agent shall have authority to enter and inspect, without a warrant during normal business hours, and with a warrant during non-business hours, the facilities and records of any cigarette distributor, cigarette importer, cigarette manufacturer, or cigarette retail dealer.

(b) In any case where the commissioner or the commissioner's duly authorized agent, or any police officer of Tennessee, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this part, the commissioner, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

§ 67-4-1110.

(a) Any person who omits, neglects, or refuses to comply with any duty imposed upon such person by this part, or to do, or cause to be done, any of the things required by this part, or does anything prohibited by this part, shall, in addition to any other penalty provided in this part or part 10, be liable to a penalty of one thousand dollars (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

(b) Whoever fails to pay any tax imposed by part 10 at the time prescribed by law or regulations, shall, in addition to any other penalty provided in this part or part 10, be liable to a penalty of five (5) times the tax due but unpaid.

(c) All cigarettes which are held for sale or distribution within the borders of Tennessee in violation of the requirements of this part or part 10 shall be forfeited to Tennessee. All cigarettes forfeited to Tennessee under this part or part 10 shall be destroyed.

§ 67-4-1111.

(a) Whoever, with intent to defraud Tennessee, fails to comply with any requirement of this part or regulations prescribed thereunder, commits a Class C felony and shall, in addition to any other penalty provided in this part or part 10, for each such offense, be fined not more than ten thousand dollars (\$10,000), or imprisoned for not more than five (5) years, or both.

(b) A person who knowingly violates any provision of this part, or of regulations prescribed thereunder, commits a Class D felony and shall, in addition to any other penalty provided in this part or part 10, for each such offense be fined five thousand dollars (\$5,000) or be imprisoned for not more than one (1) year, or both.

(c) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes by a cigarette manufacturer or cigarette importer shall result in the seizure of the product and related machinery by the department or any law enforcement agency and shall be punishable as follows:

(1) A first violation involving a total quantity of less than two (2) cartons of cigarettes is a Class E felony punishable by a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both.

(2) A subsequent violation involving a total quantity of less than two (2) cartons of cigarettes is a Class D felony punishable by a fine of

five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both, and shall also result in revocation by the department of the cigarette manufacturer or cigarette importer license.

(3) A first violation involving a total quantity of two (2) cartons of cigarettes or more is a Class E felony punishable by a fine of two thousand dollars (\$2,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both.

(4) A subsequent violation involving a quantity of two (2) cartons of cigarettes or more is a Class D felony punishable by a fine of fifty thousand dollars (\$50,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both, and shall also result in the revocation by the department of the cigarette manufacturer and cigarette importer license.

For purposes of this section, counterfeit cigarettes includes cigarettes that have false manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit cigarette seized by the board shall be destroyed.

§ 67-4-1112.

(a) For purposes of this section:

(1) "Adult" means a person who is at least the legal minimum purchase age.

(2) "Consumer" means an individual who is not licensed as a wholesaler or retailer pursuant to § 67-4-1015.

(3) "Delivery sale" means any sale of cigarettes to a consumer in the state where either:

(A) The purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, the mails or any other delivery service, or the Internet or other online service; or

(B) The cigarettes are delivered by use of the mails or other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a retail dealer shall not be a delivery sale.

(4) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(5) "Department" means the Tennessee department of revenue.

(6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase cigarettes in the state.

(7) "Mails" or "mailing" means the shipment of cigarettes through the United States postal service.

(8) "Person" means the same as that term is defined in § 67-4-1001.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(b)

(1) No person shall make a delivery sale of cigarettes to any

individual who is under the legal minimum purchase age in Tennessee.

(2) Each person accepting a purchase order for a delivery sale shall comply with:

(A) The age verification requirements set forth in subsection (c);

(B) The disclosure requirements set forth in subsection (d);

(C) The shipping requirements set forth in subsection (e);

(D) The registration and reporting requirements set forth in subsection (f);

(E) The tax collection requirements set forth in subsection (g); and

(F) All other laws of the state generally applicable to sales of cigarettes that occur entirely within the state, including, but not limited to, those laws imposing:

(i) Excise taxes;

(ii) Sales taxes;

(iii) License and revenue-stamping requirements;

and

(iv) Escrow payment obligations as set forth in §§ 47-31-101 through 47-31-103.

(c)

(1) No person shall mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless such person prior to the first delivery sale to such consumer:

(A) Obtains from the prospective consumer a certification

that includes:

- (i) A reliable confirmation that the consumer is at least the legal minimum purchase age; and

- (ii) A statement signed by the prospective consumer in writing that certifies the prospective consumer's address and that the consumer is at least eighteen (18) years of age.

Such statement shall also confirm:

- (i) That the prospective consumer understands that signing another person's name to such certification is illegal;

- (ii) That the sale of cigarettes to individuals under the legal minimum purchase age is illegal;

- (iii) That the purchase of cigarettes by individuals under the legal minimum purchase age is illegal under the laws of the state; and

- (iv) That the prospective consumer wants to receive mailings from a tobacco company;

(B) Makes a good faith effort to verify the information contained in the certification provided by the prospective consumer pursuant to subdivision (A) against a commercially available database, or obtains a photocopy or other image of the valid, government-issued identification stating the date of birth or age of the individual placing the order;

(C) Provides to the prospective consumer, via e-mail or other means, a notice that meets the requirements of subsection

(d); and

(D) In the case of an order for cigarettes pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name, or by check.

(2) Persons accepting purchase orders for delivery sales may request that prospective consumers provide their e-mail addresses.

(d) The notice required under subdivision (c)(1)(C) shall include:

(1) A prominent and clearly legible statement that cigarette sales to consumers below the legal minimum purchase age are illegal;

(2) A prominent and clearly legible statement that consists of one (1) of the warnings set forth in section 4(a)(1) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1333(a)(1), rotated on a quarterly basis;

(3) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (c); and

(4) A prominent and clearly legible statement that cigarette sales are subject to tax under § 67-4-1004, and an explanation of how such tax has been, or is to be, paid with respect to such delivery sale.

(e)

(1) Each person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale:

(A) Shall include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: "Cigarettes: Tennessee Law Prohibits Shipping to

Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(B) Shall use a method of mailing, shipping, or delivery that obligates the delivery service to require:

(i) The consumer placing the purchase order for the delivery sale, or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container; and

(ii) Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that the individual is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under twenty-seven (27) years of age; and

(C) Shall provide to the delivery service retained for such delivery sale evidence of full compliance with subsection (g).

(2) If the person accepting a purchase order for a delivery sale delivers the cigarettes without using a delivery service, such person shall comply with all requirements of this section applicable to a delivery service and shall be in violation of the provisions of this section if the person fails to comply with any such requirement.

(f)

(1) Prior to making delivery sales or mailing, shipping, or

otherwise delivering cigarettes in connection with any such sales, every person shall file with the department a statement setting forth such person's name, trade name, and the address of such person's principal place of business and any other place of business.

(2) Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such sale during the previous calendar month shall file with the department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(A) The name and address of the consumer to whom such delivery sale was made;

(B) The brand or brands of the cigarettes that were sold in such delivery sale; and

(C) The quantity of cigarettes that were sold in such delivery sale.

(3) Any person that satisfies the requirements 15 U.S.C. § 376 shall be deemed to satisfy the requirements of this section.

(g) Each person accepting a purchase order for a delivery sale shall collect and remit to the department all cigarette taxes imposed by the state with respect to such delivery sale, except that such collection and remission shall not be required to the extent such person has obtained proof (in the form of the presence of applicable tax stamps or otherwise) that such taxes already have been paid to the state.

(h)

(1) Except as otherwise provided in this section, a first violation of any provision of this section shall be punishable by a fine of one thousand

dollars (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater. A second or subsequent violation of any provision of this section shall be punishable by a fine of five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater.

(2) Any person who knowingly violates any provision of this section, or who knowingly and falsely submits a certification under subdivision subsection (c)(1)(A) in another person's name commits a Class D felony and, shall, for each such offense, be fined five thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years, or both.

(3) Any person failing to collect or remit to the department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five (5) times the retail value of the cigarettes involved.

(4)

(A) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the requirements of this section shall be forfeited to the state and destroyed.

(B) All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud the state, violates any of the requirements of this section, shall be forfeited to the state.

(i) The attorney general or the attorney general's designee, or any person who holds a valid permit under 26 U.S.C. § 5712, may bring an action in the appropriate court in the state to prevent or restrain violations of this section by

any person, or any person controlling such person.

SECTION 2. This act shall take effect July 1, 2003, the public welfare requiring it.